

Agenda Item Form

Agenda Date: 6/2/04

Districts Affected: 3

Dept. Head/Contact Information: Patrick T. Abeln, Director of Aviation-780-4724

Type of Agenda Item:

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input checked="" type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): Sylvia Firth ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

New lease for the property located at 6625 Montana Avenue

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

N/A

Statutory or Citizen Concerns:

NONE

Departmental Concerns:

NONE

ITEM: Resolution that the Mayor be authorized to sign a Commercial Site Lease by and between the City of El Paso ("Lessor") and KAMS Partners, LP ("Lessee") for the real property described as Lot 13 and a portion of Lot 14, Block 15, El Paso International Airport Tracts, Unit Three, City of El Paso, El Paso County, Texas, municipally known and numbered as 6625 Montana Avenue, El Paso, Texas.



El Paso International Airport

TO: Mayor and Council
Jim Martinez, CAO

FROM: Patrick T. Abeln, A.A.E. *Patrick Abeln*
Director of Aviation

SUBJECT: **Lease Agreement between the City of El Paso (Lessor) and KAMS Partners, LP (Lessee) for the property known as Lot 13 and Westerly 54.99 feet of Lot 14, Block 5, El Paso International Airport Tracts, Unit 3, 6625 Montana Ave. 6-2-04 Consent Agenda Item # _____**

BACKGROUND:

On March 20, 1979, the City of El Paso entered into the above referenced lease with Mercantile Ventures (Dunkin Donuts) for a term of twenty-five (25) years. The Lease was subsequently assigned to KAMS Partners, LP effective July 1, 2002. The Leased Premises contains approximately 27,752.36 square feet and KAMS has, subsequent to the assignment, razed the original building located on the land. The present lease rate on the property is \$0.75 per square foot for a total annual rental payment of \$20,736.00.

ANALYSIS:

KAMS Partners, LP, now desire to construct new facilities on the Premises and have requested a new lease, as the existing agreement will expire June 30, 2004. The new proposed term is 30 years with 2 five-year options at a rate of \$0.84 per square foot per annum or \$23,312.52 per year. A recent appraisal to determine market value set the new rental rate. In accordance with the Leasing Policy, the rent will be adjusted every 5 years based on 9% of the Fair Market Value not to exceed a 20% increase.

RECOMMENDATION:

The Department of Aviation recommends approval of this item, which has been reviewed and approved by the City Attorney's Office and the Airport Board. This item has been placed on the City Council agenda of June 2, 2004 for your consideration.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Commercial Site Lease by and between the City of El Paso ("Lessor") and KAMS Partners, LP ("Lessee") for the real property described as Lot 13 and a portion of Lot 14, Block 15, El Paso International Airport Tracts, Unit Three, City of El Paso, El Paso County, Texas, municipally known and numbered as 6625 Montana Avenue, El Paso, Texas.

ADOPTED this the 2nd day of June 2004.

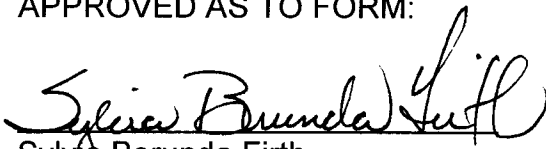
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT



Patrick T. Abein, A. A. E.
Director of Aviation

ORIGINATING DEPARTMENT: AIRPORT

COMMERCIAL SITE LEASE

**EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS**

KAMS Partners, LP
Lessee

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	PREMISES AND PRIVILEGES2
Section 1.01	Description of Premises Demised2
Section 1.02	Right to Construct.....2
Section 1.03	Restrictions of Privileges, Uses and Rights2
Section 1.04	Conditions of Granting Lease2
Section 1.05	Prior Lease Superseded.....2
ARTICLE II	OBLIGATIONS OF LESSOR3
Section 2.01	Quiet Enjoyment.....3
Section 2.02	Condition and Maintenance of Premises “As Is”3
ARTICLE III	OBLIGATIONS OF LESSEE3
Section 3.01	Net Lease3
Section 3.02	Condition of Premises3
Section 3.03	Compliance With Laws.....3
Section 3.04	Minimum Improvement Standard8
Section 3.05	Lessee’s Approval of Plans....8
Section 3.06	Maintenance.....8
Section 3.07	Utilities.....9
Section 3.08	Trash, Garbage, Etc.9
Section 3.09	Permitted Uses.....9
ARTICLE IV	TERM OF LEASEHOLD9
Section 4.01	Term9
Section 4.02	Options to Extend.....9
Section 4.03	Holding Over10
Section 4.04	National Emergency10
ARTICLE V	RENTALS10
Section 5.01	Ground Rental.....10
Section 5.02	Commencement of Rental.....10
Section 5.03	Readjustment of Ground Rental.....10
Section 5.04	Time of Payment12
Section 5.05	Unpaid Rent, Fees and Charges12
Section 5.06	Place of Payment12
ARTICLE VI	INSURANCE AND INDEMNIFICATION12
Section 6.01	Fire and Other Risks Insurance.....12
Section 6.02	Liability Insurance.....13
Section 6.03	Performance Bonds.....13
Section 6.04	Authorized Insurance Companies13
Section 6.05	Indemnification14

ARTICLE VII	DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY	14
Section 7.01	Obligations of Lessee	14
Section 7.02	Insurance Proceeds	15
Section 7.03	Cancellation of Lease	15
ARTICLE VIII	CONDEMNATION	16
Section 8.01	Definitions	16
Section 8.02	Notice of Condemnation	17
Section 8.03	Rights of Parties During Condemnation Proceeding	17
Section 8.04	Taking of Leasehold	17
Section 8.05	Total Taking	18
Section 8.06	Partial Taking	18
Section 8.07	Obligations of Lessee Under Partial Taking	18
Section 8.08	Taking of Temporary Use of Premises and Improvements	18
ARTICLE IX	ENCUMBRANCES	19
Section 9.01	Encumbrance	19
Section 9.02	Mortgagee's Rights	19
Section 9.03	Rights on Foreclosure	19
ARTICLE X	EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER	20
Section 10.01	Expiration	20
Section 10.02	Cancellation	20
Section 10.03	Repossessing and Reletting	21
Section 10.04	Assignment and Transfer	21
Section 10.05	Subleasing	21
Section 10.06	Rights Upon Expiration	22
Section 10.07	Landlord's Lien	22
ARTICLE XI	GENERAL PROVISIONS	23
Section 11.01	Continuity of Declarations of Restrictions and Covenants	23
Section 11.02	Right of Flight	23
Section 11.03	Time is of the Essence	23
Section 11.04	Notices	23
Section 11.05	Attorney's Fees	24
Section 11.06	Agreement Made in Texas	24
Section 11.07	Nondiscrimination Covenant	24
Section 11.08	Affirmative Action	25
Section 11.09	Cumulative Rights and Remedies	25
Section 11.10	Interpretation	26
Section 11.11	Agreement Made in Writing	26
Section 11.12	Paragraph Headings	26
Section 11.13	Severability	26

ARTICLE XI	GENERAL PROVISIONS (Continued)	
Section 11.14	Successors and Assigns	26
Section 11.15	Taxes and Other Charges	26
Section 11.16	Waiver of Warranty of Suitability	27
Section 11.17	Survival of Certain Provisions.....	27
Section 11.18	Restrictions and Reservations.....	27
Section 11.19	Authorization To Enter Lease.....	27
Section 11.20	Force Majeure	27
Section 11.21	Right of Entry.....	27
Section 11.22	Subordination of Lease	27
Section 11.23	Effective Date	28
NOTARY CERTIFICATES		29
ATTACHMENTS		
EXHIBIT A - Detailed Sketch of Plot to be Leased.		
EXHIBIT B - Declarations of Restrictions and Covenants		

COMMERCIAL SITE LEASE

THIS LEASE AGREEMENT made this _____ day of _____ 2004,
between the **CITY OF EL PASO** ("Lessor") and **KAMS Partners, LP**, a Texas limited
partnership ("Lessee").

WITNESSETH:

WHEREAS, Lessor owns and operates El Paso International Airport, located in
the County of El Paso, State of Texas, ("Airport"), said Airport being managed by the
Director of Aviation ("Director");

WHEREAS, Lessor leased a parcel of land to Mercantile Ventures, Inc. under a
lease agreement effective on July 1, 1979 ("Prior Lease"). The initial term of the Prior
Lease will expire on June 30, 2004. On July 16, 2002, the Prior Lease was assigned to
Lessee;

WHEREAS, Lessor deems it advantageous to itself and to its operation of the
Airport to continue to lease to Lessee the parcel of land described below, together with
certain privileges, right, uses and interest therein;

WHEREAS, Lessor and Lessee desire to replace the Prior Lease with this
Commercial Site Lease;

WHEREAS, Lessee has indicated a willingness and ability to properly keep,
maintain and improve the property in accordance with standards established by Lessor
if granted a lease of sufficient term;

NOW THEREFORE, subject to and in accordance with the terms, conditions,
covenants, agreements and undertakings hereinafter set forth, Lessor does hereby

demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas.

ARTICLE I - PREMISES AND PRIVILEGES

Section 1.01 Description of Premises Demised. The real property subject to this lease is described as follows:

Lot 13 and a portion of Lot 14, Block 5, El Paso International Airport Tracts, Unit Three, City of El Paso, El Paso County, Texas, municipally known and numbered as 6625 Montana Avenue, more fully described in Exhibit "A", attached hereto and incorporated herein by reference ("Premises").

Section 1.02 Right to Construct. In addition to the general privileges, uses, rights, and interests attaching to the Premises hereinbefore described and without limiting the generality thereof, Lessee shall have the right and shall provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Premises, for the purpose of carrying out any of the activities provided for herein, subject, however, to the conditions herein generally or particularly set forth.

Section 1.03 Restrictions of Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the construction and operation of facilities in accordance with the "Declaration of Restrictions and Covenants", attached hereto as Exhibit B, and incorporated herein by reference.

Section 1.04 Conditions of Granting Lease. The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or functional change in the uses of the Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

Section 1.05 Prior Lease Superseded. Notwithstanding anything contained herein to the contrary, the Prior Lease shall be negated and superseded upon final execution of this Lease.

ARTICLE II - OBLIGATIONS OF LESSOR

Section 2.01 Quiet Enjoyment. Lessor covenants and agrees that it has good title to the Premises, free and clear of all liens and encumbrances; and that Lessor has the right and authority to lease the same as herein set forth. Lessor further covenants that all things have happened and been done to make its granting of said Lease effective and Lessor warrants to Lessee peaceful possession and quiet enjoyment of the Premises during the term hereof, including any extensions thereto, upon performance of Lessee's covenants herein.

Section 2.02 Condition and Maintenance of Premises "As Is". Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

ARTICLE III - OBLIGATIONS OF LESSEE

Section 3.01 Net Lease. This Lease in every sense shall be without cost to Lessor for the development, maintenance and improvement of the Premises. It shall be the sole responsibility of Lessee to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense.

Section 3.02 Condition of Premises. Lessee accepts the Premises in their present condition and, without expense to Lessor, will repair and maintain any installations thereon and remove or cause to be removed any debris to the extent required for its use thereof.

Section 3.03 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the Declaration of Deed Restrictions and Covenants, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the

Premises and any improvements thereon by disabled persons ("Disabilities Laws"). Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

1. "Environmental Laws" means all present or future local, state or federal statutes, ordinances, rules, regulations (proposed or adopted), permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof, including specifically but without limitation, the City of El Paso, having governmental or quasi-governmental authority, relating to:
 - a. the protection of health, safety and the indoor or outdoor environment,
 - b. the conservation, management or use of natural resources and wildlife,
 - c. the protection or use of surface water and ground water,
 - d. the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined in Paragraph 2, below), or
 - e. pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water),

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. 18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), The Clean Water Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. 2601 et seq.), the Safe Drinking Water Act (U.S.C. 300f-300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulation, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or

by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of Paragraph 1 to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of the paragraph.

2. "Hazardous Material" means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substance (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is petroleum or a petroleum distillate, friable asbestos or asbestos containing materials, polychlorinated biphenyls, natural gas, source material, special nuclear material and by-product materials regulated under the Environmental Laws as defined in Paragraph 1 hereinabove, and any hazardous waste, toxic or dangerous substance or related material, including any materials defined or treated as a "hazardous substance", "hazardous waste", "toxic substance" or contaminant (or comparable term) under any of the Environmental Laws.
3. "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

1. Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, sublessees and patrons (the "Lessee Responsible Party"), in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and**

all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole but only to the extent caused by a Lessee Responsible Party) of any activity or operation on or discharge from the Premises or any improvements thereon which activity or operation or discharge occurs on or subsequent to the effective date of this Lease that is caused by a Lessee Responsible Party. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises caused by a Lessee Responsible Party. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

2. Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon to the extent caused by a Lessee Responsible Party, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

3. To the extent required by the activities or possession of the Premises of Lessee, or Lessee Responsible Party, Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
4. Lessee shall immediately notify Lessor of any of the following: (a) receipt of any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
5. Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease;

C. Reporting.

1. At any time that Lessee submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration, the Environmental Protection Agency or the Texas Natural Resources Conservation Commission, Lessee shall provide duplicate copies of the filing(s) made along with any related documents to Lessor.
2. Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide a current Phase I environmental site assessment of the Premises acceptable to Lessor; and if, in the opinion of Lessor, the Premises shall require environmental remediation if the condition was caused by a Lessee Responsible Party, Lessee shall perform same to return the Premises into a (like

new) condition equal or better to that as of the effective date of the Lease.

Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises, the cost of which shall be borne by Lessee

Lessee's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and, shall permit Lessor to pursue the remedies as set forth in Section 10.02 hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

Section 3.04 Minimum Improvement Standard. Lessee covenants and agrees that it shall construct facilities, exclusive of paving and landscaping, to a minimum extent of 1800 square feet, but only to a maximum extent of fifty percent (50%) of the Premises' land area.

Section 3.05 Lessor's Approval of Plans. Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules, and regulations of federal, state, county and municipal authorities.

Section 3.06 Maintenance. Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on Airport property. Lessee shall repair all damages to said Premises caused by its employees, patrons or its operation thereon; shall maintain and repair all equipment thereon, including any drainage installations, paving, curbs, islands, buildings and improvements; and shall repaint its own buildings as necessary.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within thirty (30) days after receipt of written notice, Lessor shall have the right, to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee. Prior to entry upon the Premises to perform the required maintenance obligations, Lessor will provide Lessee at least ten (10) days written notice of the time of its entry and will use commercially reasonable efforts not to interfere with the business operations conducted upon the Premises.

Section 3.07 **Utilities.** Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate governmental authorities responsible for the approval of the use of storm and sanitary sewers and water utility outlets in the City of El Paso.

Section 3.08 **Trash, Garbage, Etc.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

Section 3.09 **Permitted Uses.** Lessee covenants and agrees that, in no event, will it enter into any business activity on the Airport other than those specified in the "Declaration of Restrictions and Covenants Industrial Zones", as set forth in Exhibit B.

ARTICLE IV - TERM OF LEASEHOLD

Section 4.01 **Term.** The term of this Lease shall be for a period of thirty (30) years commencing on the 1st day of _____ 2004 and expiring on _____, 2034.

Section 4.02 **Options to Extend.** In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of five (5) years each. Lessee may exercise the first five (5) year option ("First Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the initial term. In the event Lessee exercises its first option, the Lease shall be extended for five (5) years on the same terms and conditions, except that the Ground Rental shall be adjusted as set forth in Section 5.03(B) below. In no event, however, shall the adjusted Ground Rental during the First Option Period be less than the Ground Rental established at the beginning of the Lease.

Lessee may exercise the second five (5) year option ("Second Option Period") by notifying Lessor in writing at least one hundred and twenty (120) days prior to the expiration of the First Option Period. In the event Lessee exercises its second option, the Lease shall be extended for an additional five (5) years on the same terms and conditions, except that the Ground Rental for this Second Option Period shall be readjusted as set forth in Section 5.03 (B) below. In no event, however, shall this adjusted Ground Rental during this Second Option Period be less than the Ground Rental established in the First Option Period.

Lessee's options to extend the Lease shall terminate if Lessee fails to notify Lessor in writing 120 days before the expiration of the initial term or any relevant option period. Time is of the essence with regard to the 120 day notice requirement.

Section 4.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1½) times the current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

Section 4.04 National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, at the option of Lessee, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE V - RENTALS

Section 5.01 Ground Rental. For the purpose of computing the annual rental to be paid by Lessee to Lessor for the Premises ("Ground Rental"), Lessor and Lessee agree that the Premises comprise 27,753 square feet. The Ground Rental for the Premises will be calculated on the basis of 27,753 square feet at \$0.84 per square foot per annum. Initially, therefore, the Annual Ground Rental shall be \$23,312.52.

Section 5.02 Commencement of Rental. Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on the effective date of this Lease, which is _____, 2004.

Section 5.03 Readjustment of Ground Rental.

- A. Within ninety (90) days prior to the end of each five (5) year period, the Ground Rental shall be established to equal nine percent (9%) of the then fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. In no event, however, shall the Ground Rental be less than, nor twenty percent (20%) more than, the Ground Rental for the rental period immediately preceding the respective lease anniversary.

- B. Within ninety (90) days of the commencement of any option period, the Ground Rental shall be adjusted to a rate equal to nine percent (9%) of the fair market value of the Premises on the date of the commencement of the option period. Fair market value shall be calculated on the land only, and without regard to the value of the improvements located on the Premises. The 20% cap set forth in paragraph 5.03 (A) shall not apply when the Ground Rental Adjustment is being made in connection with the exercise of an option.
- C. The fair market value of the Premises shall be determined by an appraisal of the Premises; however, if mutually agreeable to Lessor and Lessee, the appraisal to determine the fair market value, may be foregone under either of the following conditions:
1. The Director of Aviation and Lessee mutually agree to an increase in the Ground Rental equaling the maximum allowable percentage for that given lease anniversary as set forth hereinabove; or
 2. The Director of Aviation and Lessee agree on the fair market value of the Premises established by a recent appraisal of similar property located in the surrounding area which was performed within twelve (12) months of the lease anniversary date in question.

In the event Lessor and Lessee do not so mutually agree, the Lessor shall select a qualified appraiser ("First Appraiser") to establish the fair market value of the Premises, disregarding the value of any Lessee-owned improvements located on the Premises. Lessor shall notify Lessee of such selection and, if Lessee is not satisfied with the selection of the First Appraiser, Lessee, within fifteen (15) days after receipt of said notice, shall notify Lessor of Lessee's selection of a qualified second appraiser ("Second Appraiser"). If Lessee does not so select a Second Appraiser, the First Appraiser shall proceed to establish the fair market value of the Premises. If the Second Appraiser is so selected and Lessor is satisfied with such selection, the Second Appraiser shall proceed to determine the fair market value of the Premises.

If Lessor is not satisfied with the selection of the Second Appraiser and Lessor and Lessee cannot mutually agree on the selection of one appraiser, then both the First Appraiser and the Second Appraiser will proceed to independently determine the fair market value of the Premises. If the fair market value determined in the two appraisals differs by less than five percent (5%), then the fair market value of the Premises shall be established by the averaging of the two appraisals. If the fair market value determined by the two appraisals differs by five percent (5%) or more and the Lessor and Lessee cannot mutually agree as to a fair market value, the First Appraiser and the Second Appraiser shall mutually select a third qualified appraiser to determine the fair market value of the Premises. In such event, the fair market value shall be established by averaging the two appraisals that are the closest in fair market value determinations.

In any case, the fees and expenses of any appraisals shall be borne equally by the Lessor and Lessee and the Ground Rental established by the determination of the fair market value shall be effective as of the anniversary date for which the adjustment of the Ground Rental is being determined. Furthermore, any appraiser designated to serve in accordance with the provisions of this Lease shall be an unbiased and disinterested party and shall be qualified to appraise real estate of the type covered by this Lease situated in El Paso County, Texas, and shall have been actively engaged in the appraisal of real estate similar to the Premises and located in El Paso County, Texas for a period of not less than five (5) consecutive years immediately preceding his appointment.

Section 5.04 **Time of Payment.** The Ground Rental shall be paid monthly in advance on or before the first day of each month in a sum equal to one-twelfth of the annual Ground Rental due hereunder.

Section 5.05 **Unpaid Rent, Fees and Charges.** Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 10th day of the month in which payment is due, shall bear interest at the rate of fifteen percent (15%) per annum from the date when the same was due according to the terms of this Lease until paid by Lessee.

Section 5.06 **Place of Payment.** All rental payments provided herein shall be paid to Lessor at the following address:

Accounting Department,
El Paso International Airport
6701 Convair Road.
El Paso, Texas 79925-1091.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

Section 6.01 **Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation ("Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selected be unsatisfactory to Lessor, or Lessee chooses not to select an appraiser, the carrier of the insurance then in force shall be

requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

Section 6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 6.03 Performance Bonds. Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

Section 6.04 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas with an A.M. Best Rating Company rating of not less than "A" according to the most recent rating thereof. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of this Lease. Each such policy shall contain:

- A. A statement of the coverage provided by the policy;

- B. A statement certifying the Lessor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Lessor.

Section 6.05 Indemnification. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

Section 7.01 Obligations of Lessee. During the term hereof, except as provided in Section 7.03 below, should the improvements constructed by Lessee upon the Premises be damaged or destroyed, in whole or in part, by fire or other casualty, Lessee shall give prompt notice thereof to Lessor. Lessee, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time or rebuild alternative buildings and improvements that will suit the requirements of the Lease Declarations of Restrictions and Covenants, Lessee and Lessee's subtenants. Such repairs, replacements or rebuilding shall be made by Lessee as aforesaid and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Lessee shall deliver to Lessor a set of the preliminary construction plans and specifications in accordance with the terms and provisions of the Declaration of Lease Restrictions and Covenants attached hereto as Exhibit "B". In the event the preliminary plans and specifications are disapproved, Lessee will be so notified and the notice shall specify in detail the reasons therefore and the requested modifications or alterations thereto.

- B. Upon approval of the preliminary plans and specifications, as herein provided, Lessee shall prepare or cause to be prepared final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Lessee shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Lessee shall deliver to Lessor one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction there over. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Prior to commencing construction, Lessor may require Lessee to furnish a performance and payment bond and, if requested, Builder's Risk Insurance.
- D. Upon compliance with the foregoing, and after settlement shall have been made with the insurance company or companies and said proceeds of such insurance policy or policies shall have been paid to Lessee, Lessee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

Section 7.02 Insurance Proceeds. Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

Section 7.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last three (3) years of the initial term or last three (3) years of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Article X, Section 10.06 herein below, in

which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such termination. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE VIII - CONDEMNATION

Section 8.01 **Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use or depriving the Lessee of full use and enjoyment and access to the Premises for the benefit of the public under any statute ordinance or regulation order or by the action of a governmental or quasi-governmental entity. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The Taking shall be considered to take place the date actual physical possession or action depriving full use and access is taken by the condemning authority.
- B. "Total Taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial Taking" means the Taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.

- D. "Partial taking" means the taking of a title that is not either a Total Taking or Substantial Taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Leased Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking or an action occurs that results in a Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Leased Premises pursuant to a final order of condemnation or agreement between the parties hereto or the occurrence of the event constituting the Taking.

Section 8.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended Taking;
- B. Service of any legal process relating to condemnation of the Leased Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Section 8.03 Rights of Parties During Condemnation Proceeding. Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

Section 8.04 Taking of Leasehold. Upon a Total Taking, Lessee's obligation to pay rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, act, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Leased Premises not so taken, except that the rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Leased Premises taken bears to the total area of the Leased Premises or the reduction in value of the Leased Premises if the Partial Taking is not a Taking of the fee interest.

Section 8.05 Total Taking. All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Leased Premises, as unencumbered by the Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

Section 8.06 Partial Taking. Upon a Partial Taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Leased Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Leased Premises as unencumbered by the improvements but subject to the Lease.

Section 8.07 Obligations of Lessee Under Partial Taking. Promptly after any such partial taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Leased Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Leased Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Leased Premises as aforesaid by notifying Lessor of its intention to that effect; provided, however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

Section 8.08 Taking of Temporary Use of Leased Premises and Improvements. Upon any taking of the temporary use of all or any part or parts of the Leased Premises or improvements, or impairment of use or access, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the

term nor the rent shall be reduced or affected in any way, except as provided herein, and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Leased Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Leased Premises and improvements from all liens or claims arising there from, Lessee shall be entitled to any surplus.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

ARTICLE IX - ENCUMBRANCES

Section 9.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Leased Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage.
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee, by certified mail at the latest address furnished by such Mortgagee, a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Lease so long as such Mortgage is in effect.

Section 9.02 Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have one hundred and twenty (120) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within one hundred and twenty (120) days, to commence performance within such one-hundred-twenty day period

and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or

- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

Section 9.03 Rights on Foreclosure. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Lease.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

Section 10.01 Expiration. This Lease shall expire at the end of the term or any extension thereof.

Section 10.02 Cancellation. Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Leased Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged a bankrupt in involuntary bankruptcy proceedings that are not dismissed or vacated within sixty (60) days; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Leased Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Leased Premises.

Subject to applicable notice and cure periods, the Lessor shall have the right to immediately terminate this Lease for default if the Lessee violates any local, state, or federal laws, rules or regulations that relate to the performance of this Lease.

Section 10.03 Repossessing and Reletting. In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Leased Premises or any part thereof and repossess the same, expelling there from Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such lawful force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Leased Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Leased Premises and the amounts received from reletting the Leased Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

Section 10.04 Assignment and Transfer. Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor; provided, however, that Lessor's approval shall not be required in the event of an assignment of this Lease by Lessee to the first leasehold Mortgagee

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

Section 10.05 Subleasing. Lessee shall have the right, without the consent of Lessor, to sublease all or any part of the Leased Premises or Lessee-owned improvements located on the Leased Premises for the same purposes permitted under the terms and provisions of this Lease. Any such leases shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by the occupants of the improvements to the terms and covenants contained in this Lease. Lessee shall promptly report to Lessor any leases of the Leased Premises or improvements.

Section 10.06 Rights Upon Expiration. At the expiration of this Lease, Lessor shall be entitled to have the Leased Premises returned to Lessor clear of all improvements above ground level. Lessee shall have one hundred and eighty (180) days after expiration in which to remove such improvements; provided that any occupancy by Lessee for the purposes of removal shall be subject to the rental due hereunder. If Lessee fails to so remove said improvements, Lessor may remove same at Lessee's expense.

Lessor may, at its option, take title to the improvements in lieu of removal by or for Lessee. Lessor shall notify Lessee of its election to require removal of the improvements or take possession of the improvements at least ninety (90) days prior to the expiration of the last year of this Lease or any extension or renewal thereof.

Section 10.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Leased Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Leased Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission or its successor agency, and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to

take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Leased Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

Section 11.01 Continuity of Declarations of Restrictions and Covenants. This Lease agreement is subject to the terms, covenants and conditions contained in the Declarations of Restrictions and Covenants attached hereto as Exhibit "B". Lessor reserves the right to revise the restrictions and covenants set for in Exhibit "B", by giving Lessee ten (10) days notice prior to such revision, provided, however, that such revisions will not cause a substantial reduction in the value of Lessee's leasehold interest, or require a substantial expenditure by Lessee to comply with such revisions, impose additional obligations upon Lessee or impair or diminish Lessee's rights to the Leased Premises. Lessor's right to revise the restrictions and covenants contained in Exhibit "B" includes but is not limited to, the right to revise said document because of the development of new concepts or improved construction and architectural techniques.

Section 11.02 Right of Flight. The City of El Paso reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the El Paso International Airport.

The City of El Paso reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Leased Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at El Paso International Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

The City of El Paso reserves for itself, its successors and assigns the right to prevent any use of the Leased Premises which would interfere with aircraft landing on or taking off from the El Paso International Airport and the right to prevent any other use of the Leased Premises which would constitute an airport hazard.

Section 11.03 **Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

Section 11.04 **Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR:	City Clerk	Director of Aviation
	City of El Paso	El Paso International Airport
	2 Civic Center Plaza	6701 Convair Road
	El Paso, Texas 79999	El Paso, Texas 79925-1091

LESSEE: KAMS Partners, LP
6500 Montana Ave.
El Paso, TX 79925

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

Section 11.05 **Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 11.06 **Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

Section 11.07 **Nondiscrimination Covenant.** Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for the purpose for which DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the

benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.

- C. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Discrimination. To the extent that, under this Lease, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
 - 1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and
 - 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

Section 11.08 Affirmative Action. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, age, disability, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to

Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

Section 11.09 Cumulative Rights and Remedies. All rights and remedies of Lessor and Lessee herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor or Lessee of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 11.10 Interpretation. Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Section 11.11 Agreement Made in Writing. This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 11.12 Paragraph Headings. The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

Section 11.13 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 11.14 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 11.15 Taxes and Other Charges. The Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Leased Premises, or any improvements thereon, during the term of this Lease including any extensions or option periods

granted thereto that are exercised. Lessee agrees to pay all ad valorem taxes attributable to improvements or personal property located on the Leased Premises regardless of ownership or title to same and waives any right to assert immunity for said ad valorem taxes by virtue of legal or equitable ownership in the City of El Paso. Lessee further indemnifies Lessor from all tax liability and agrees to assume and be responsible for same should the exemption of the City of El Paso with respect to payment of taxes on the land itself be set aside or removed by operation of the law or be denied by appropriate public bodies or officials. Lessor shall have no objection to Lessee's participation, at Lessee's sole expense, in any proceeding or action attempting to set aside the aforesaid exemption.

Section 11.16 Waiver of Warranty of Suitability. Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Leased Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Leased Premises for their intended commercial purpose.

Section 11.17 Survival of Certain Provisions. All provisions of this Lease, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Sections 3.03 and 6.05.

Section 11.18 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land.

Section 11.19 Authorization To Enter Lease. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

Section 11.20 Force Majeure. No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

Section 11.21 Right of Entry. Upon not less than forty-eight (48) hours prior written notice, Lessor reserves for itself and any authorized agent to, at reasonable times, enter upon and inspect the Leased Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Leased Premises;

Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection; provided, Lessor will use commercially reasonable efforts not to interfere with the Lessee's operations within the Leased Premises.

Section 11.22 Subordination of Lease. All rights granted in this Lease shall be subordinate to the rights in any deed covering the Leased Premises from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Leased Premises, Lessee may cancel this Lease in its entirety and Lessee may obtain compensation as a Total Taking.

Section 11.23 Effective Date. Regardless of the date signed, this Lease shall be effective as of _____, 2004.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this day of _____, 2004.

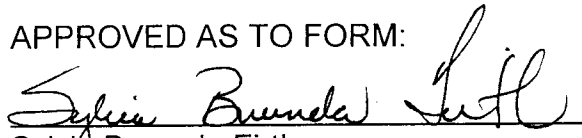
LESSOR: CITY OF EL PASO

ATTEST:

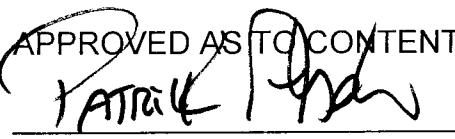
Joe Wardy
Mayor

Richard Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:


Patrick T. Abeln, A. A. E.
Director of Aviation

ATTEST:

LESSEE: KAMS Partners, LP

Name: _____

By: _____
Name: _____
Title: _____

(ACKNOWLEDGEMENTS ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____,
2004, by JOE WARDY as Mayor of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGEMENT

THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____,
2004, by _____, as _____ of KAMS Partners, LP.

Notary Public, State of Texas

My Commission Expires:

KAMS Partners, LP
Lease

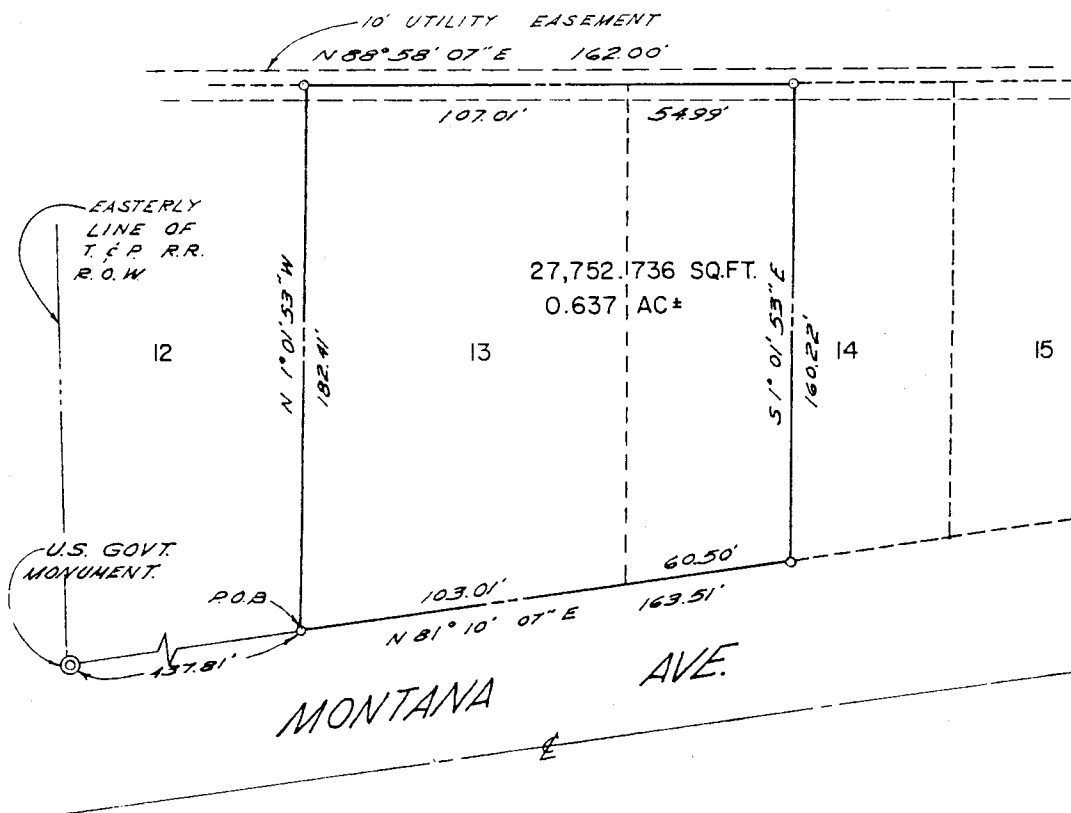
ATTACHMENTS

EXHIBIT A - Detailed Sketch of Plot to be Leased.

EXHIBIT B - Declarations of Restrictions and Covenants



⑤



PLAT

LOT 13 AND PORTION OF LOT 14, BLOCK 5,
EL PASO INTERNATIONAL AIRPORT TRACTS, UNIT 3
EL PASO COUNTY, TEXAS

DATE: NOV. 15, 1978

SCALE: 1" = 50'

CREMANS INC
ENGINEERS — PLANNERS
EL PASO, TEXAS

"NOT A SURVEY"

EXHIBIT "A"

PREPARED FOR: El Paso International Airport
Being all of Lot 13 and a Portion of Lot 14, Block 5,
El Paso International Airport Tracts, Unit 3
El Paso County, Texas

PROPERTY DESCRIPTION

Description of a parcel of land being all of Lot 13 and a portion of Lot 14, Block 5, El Paso International Airport Tracts, Unit 3, and being more particularly described by metes and bounds as follows:

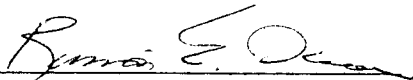
From a point, said point being a U. S. Government Monument located at the intersection of the north right-of-way line of Montana Avenue (U. S. Highway 62 - 180) and the east right-of-way line of the T & P Railroad right-of-way, thence North $81^{\circ} 10' 07''$ East along the north right-of-way line of Montana Avenue a distance of 437.81 feet to the POINT OF BEGINNING;

Thence, North $1^{\circ} 01' 53''$ West along the west line of Lot 13 a distance of 182.41 feet to the north line of Lot 13;

Thence, North $88^{\circ} 58' 07''$ East along the north line of Lot 13 and Lot 14 a distance of 162.00 feet;

Thence, South $1^{\circ} 01' 53''$ East a distance of 160.22 feet to the north right-of-way line of Montana Avenue;

Thence, South $81^{\circ} 10' 07''$ West along the north right-of-way line of Montana Avenue a distance of 163.51 feet to the POINT OF BEGINNING and containing 27,752.736 square feet or 0.637 acres of land, more or less.



Ramon E. Lara, P.E.
CREMANS, INC.
November 15, 1978

EXHIBIT "B"

DECLARATION OF DEED RESTRICTIONS AND COVENANTS

LOTS 11 THROUGH 14, BLOCK 5, EPIA TRACTS, UNIT 3

**EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS**

DECLARATION OF DEED RESTRICTIONS AND COVENANTS

TABLE OF CONTENTS

ARTICLE I	
PROPERTY	1
ARTICLE II	
DEFINITIONS	2
A. BUILDING	2
B. LOT	2
C. BUILDING SITE	2
D. STREET	2
E. SETBACK.....	2
F. FRONT LOT LINE	2
G. REAR LOT LINE	2
H. CITY	2
I. AIRPORT	2
J. DIRECTOR OF AVIATION	2
ARTICLE III	
PERMITTED USES	3
ARTICLE IV	
PERFORMANCE STANDARDS	3
A. FIRE AND EXPLOSIVE HAZARD	3
B. NOISE	4
C. VIBRATION OR SHOCK	4
D. AIR POLLUTION.....	4
E. DUST CONTROL	4
F. HEAT OR GLARE	5
G. ILLUMINATION.	5
H. SIGNS	5
I. REFUSE AND TRASH	6
J. SEWAGE DISPOSAL SYSTEMS	6
ARTICLE V	
DEVELOPMENT OF SITE - REQUIRED IMPROVEMENTS.....	6
A. OFFSTREET PARKING	6
B. VEHICLE LOADING	6
C. SETBACKS	7
D. LANDSCAPING.....	7
E. BUILDING HEIGHTS.....	7
F. TYPE OF CONSTRUCTION	7
G. STORAGE FACILITIES.....	7
H. PIPES.....	8

ARTICLE VI

PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENTS.....	8
A. GENERAL	8
B. FORM AND CONTENT OF PLANS	9
C. CODES AND REGULATIONS	9
D. APPROVAL OF PLANS	9
E. COMMITMENT TO CONSTRUCT	10
F. CONSTRUCTION WITHIN TIME SPECIFIED	10
G. PLANS FOR ALTERATIONS IN IMPROVEMENTS.....	11
H. CONSTRUCTION WITHOUT APPROVAL	11
I. FEE FOR EXAMINATION OF PLANS AND SPECIFICATIONS	11
J. RIGHT OF ENTRY AND INSPECTION.....	12

ARTICLE VII

GENERAL PROVISIONS	12
A. CUTTING AND FILLING	12
B. HOUSEKEEPING.....	12
C. MAINTENANCE OF LANDSCAPING.....	13
D. USE PERMITS	13

**DECLARATION OF DEED RESTRICTIONS AND COVENANTS
LOTS 11 THROUGH 14, BLOCK 5, EPIA TRACTS, UNIT 3**

EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS

THIS DECLARATION, made this _____ day of _____, 2004,
by the City of El Paso, a political subdivision of the State of Texas, hereinafter called
"Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of El Paso International Airport located in the
City of El Paso, State of Texas, hereinafter referred to as "Airport", and

WHEREAS, Declarant desires to subject the development of said lot to certain
conditions, restrictions, and to insure that said development will be compatible with
adjacent land uses on the Airport by performance, appearance, and general operating
characteristics,

NOW, THEREFORE, the City of El Paso hereby declares that the property more
particularly described hereafter is and shall be held and conveyed subject to the
conditions, restrictions and covenants hereinafter set forth, as follows:

ARTICLE I

PROPERTY

The real property subject to this Declaration is situated on the El Paso
International Airport and is more particularly described as follows:

Lots 11 through 14, Block 5, International Airport Tracts, Unit 3.

ARTICLE II

DEFINITIONS

Wherever used in this Declaration, the following terms shall have the following meanings:

A. **"Building"** shall include both the main portion of such building and all projections or extensions therefrom, including garages, outside platforms, and docks, carports, canopies and porches. Ground cover shall not be included.

B. **"Lot"** shall mean one of the numbered parcels on the map entitled "El Paso International Airport Tracts" as filed with the County Clerk, County of El Paso, Texas.

C. **"Building Site"** shall mean the entire lot or lots (if contiguous) leased by one tenant.

D. **"Street"** shall mean any street, highway, or other thoroughfare shown on the map entitled "El Paso International Airport Tracts", as filed with the County Clerk, County of El Paso, Texas.

E. **"Setback"** shall mean the distance a building must be set back from the property line of the parcel.

F. **"Front Lot Line"** shall mean the property line which faces the street; on corner parcels the 'front lot line' shall mean the property line which is the width dimension of the parcel.

G. **"Rear Lot Line"** shall be the property line usually parallel to the front lot line and contiguous to another parcel of property.

H. **"City"** shall mean the City of El Paso, Texas; its duly elected Council or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.

I. **"Airport"** shall mean the El Paso International Airport.

J. **"Director of Aviation"** shall mean the Director of Aviation of the El Paso International Airport.

ARTICLE III

PERMITTED USES

No building, structure, or land shall be used for any purpose other than the following, or any combination thereof, and such uses shall satisfy the standards set forth in Article IV and Article V:

A. Lots 11 through 14, Block 5:

Lessee will not enter into any business or other activity on the Leased Premises or use or permit the use of the Leased Premises for any purpose other than a Retail Shopping Center. Any other commercial uses shall be specifically approved in writing by Lessor.

ARTICLE IV

PERFORMANCE STANDARDS

No land or structure shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable conditions which may affect any other property, including, but not limited to:

- fire and explosive hazard
- noise, vibration or shock
- smoke, dust, odor or other forms of air pollution heat
- glare
- electrical or other disturbance
- liquid or solid refuse or wastes
- other substance, condition or elements in such amount as to affect the surrounding area or adjoining premises

A. FIRE AND EXPLOSIVE HAZARD. No activity shall be undertaken involving fire or explosive hazard which shall endanger the property, improvements or employees of any other property owner or tenant.

B. NOISE. At no point on any property line shall the sound pressure level of any

individual plant or operation (other than the operation of motor vehicles, aircraft, or other transportation facilities) exceed the decibel levels in the designated octave bands shown below:

<u>Octave Band Cycles Per Second</u>	<u>Maximum Permitted Sound Level in Decibels Re 0.0002 dynes/cm²</u>
0 - 300	75
300 - 1200	55
1200 - 4800	45
4800 and above	40

C. VIBRATION OR SHOCK. No vibration or shock perceptible to a person of normal sensibilities shall be permitted within 50 feet of the property line.

D. AIR POLLUTION.

1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant, shall be conducted within a completely enclosed building.
2. Visible emissions of smoke will not be permitted which exceed Ringlemann No. 1 on the Ringlemann Chart of the U. S. Bureau of Mines other than the exhausts emitted by motor vehicles or other transportation facilities. This requirement shall also be applicable to the disposal of trash and waste materials. Windborne dust, sprays, and mists originating in plants will not be permitted.
3. No plant or operation shall discharge into the atmosphere toxic or noxious matter.
4. The emission of odors which are detectable at any point beyond the property line of any plant will not be permitted.

E. DUST CONTROL. All ground areas not covered by structures shall be landscaped and surfaced with concrete, asphaltic concrete, asphalt oil or other comparable dust-free surfacing; shall be maintained in good condition, free of weeds, dust, trash, and other debris; and shall be properly drained and graded. Such

development shall be accomplished before issuance of a certificate of occupancy.

F. HEAT OR GLARE. Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be discernible from the property line.

G. ILLUMINATION.

1. The source of illumination of any kind within the property shall not be visible at the property line except for normal installation of standard interior lighting fixtures within buildings.
2. The maximum height of any lighting standard shall be limited to 30 feet above curb level.
3. The intensity of illumination shall be limited to 10-foot candles or 0.1 lumens per square foot for open areas or surfaces visible at the property line.
4. The design and location of exterior lighting shall comply in all respects to the requirements of the Federal Aviation Agency or any successor or agencies and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from and around the Airport.

H. SIGNS. The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near, or within a building:

1. Permitted Signs: Signs on the Airport shall be limited to those identifying the uses conducted on the site, to those necessary for directional purposes, and to those required to advertise the rental of the specific property on which the sign is displayed. The size, design, and location of all signs shall require the written approval of the City or its authorized agent prior to installation. Outdoor advertising, billboards, or flashing lighting shall not be permitted.
2. Area and location: One sign may be permitted in the front of each leasehold and one sign may be attached to the side of the building which faces a public street, both to state only the name, products, and services of the tenant. The sign in the front of the leasehold shall not exceed one square foot area for each lineal foot of lot frontage and shall not extend more than 35 feet in height above the ground. An approved product or

company symbol or device may be used in addition to each sign and, on the front setback line, may extend up to any point on the building. Any such symbol or device shall be considered a sign for the purposes of this Article and shall require the written approval of the City prior to installation.

3. Lessee shall be permitted to install one sign on each sub-leased area, provided said sign complies with all of the regulations of this Article.

4. Construction: All signs shall comply with all building codes of the City of El Paso and with all rules and regulations of the Federal Aviation Administration or any successor agencies.

I. REFUSE AND TRASH. No refuse or trash shall be kept, stored or allowed to accumulate on any parcel.

J. SEWAGE DISPOSAL SYSTEMS. No cesspool, septic tank or other sewage disposal system or device shall be installed, maintained or used upon any parcel without the approval of the City of El Paso.

ARTICLE V

DEVELOPMENT OF SITE - REQUIRED IMPROVEMENTS

A. OFFSTREET PARKING. All provisions for automobile parking for employees, visitors and invitees of the tenant shall be placed on the lot(s) leased. No parking whatsoever shall be permitted on the streets.

All parking areas shall be paved to provide dust-free, all-weather surfaces.

Offstreet parking facilities shall be provided in accordance with the City of El Paso Offstreet Parking Ordinance No. 1653 and any amendments or successor ordinances thereto.

Each parking space shall be designated by white lines painted upon the paved surface.

B. VEHICLE LOADING. All provisions for the loading and maneuvering of vehicles incidental to the operation of the business shall be placed on the lot(s) leased; onstreet vehicle loading shall not be permitted.

C. SETBACKS. All buildings shall be set back a minimum of 25 feet from the lot line(s) facing the street.

Side setbacks (not facing the street) shall not be required.

On Hundred Per Cent of the required minimum front setback area and side setback areas facing the street shall be landscaped and planted, unless covered by paving or outdoor construction.

Rear setbacks shall be five feet from the lot line or utility easement line, except that buildings on sites abutting railroad spurs may have loading docks extending to the rear property line, provided such construction does not interfere with utility services.

D. LANDSCAPING. A reasonable amount of landscaping, including the planting of ground-covers, shrubs and trees, shall be required, as shown on the plan as approved by Airport.

E. BUILDING HEIGHTS. Building heights shall be limited to a maximum of thirty-five feet above the curb line, including any building equipment, penthouse, extrusions, etc.

F. TYPE OF CONSTRUCTION. All buildings shall be framed with reinforced concrete or masonry, structural steel, structural aluminum, or wood which has been satisfactorily treated to resist fire, rot, and insects. Siding shall be masonry, glass, enameled steel or treated wood. Common masonry and treated wood siding shall be

kept neatly painted, if used. All buildings shall conform to all local building codes and ordinances.

G. STORAGE FACILITIES. All storage, except of autos, shall be within buildings or an enclosure. Outdoor storage facilities may be permitted as an auxiliary or accessory use when screened from abutting public thoroughfares and other properties by masonry so erected as to screen stored materials from view at any point not more than six (6) feet above ground level at the property line.

H. PIPES. No water pipe, gas pipe, sewer pipe or drainage pipe (other than those within structures) shall be installed or maintained upon any parcel above the surface of the ground, except hoses and movable pipes used for irrigation or similar purposes.

ARTICLE VI

PREPARATION AND SUBMISSION OF PLANS FOR IMPROVEMENTS

A. GENERAL. All plans for improvements shall be prepared by registered engineers and architects, shall be of contemporary design, and shall require a prior written approval by the City or its authorized agent before any construction can take place.

Upon the execution of a lease for a building site, the City and the tenant shall jointly determine a reasonable period of time in which final plans and specifications shall be submitted, such period to be set forth in writing by the City.

The following plans shall be required for submission to the City within the time period determined;

1. A plot plan at a scale not smaller than 1 inch equals 100 feet showing the relationship of the proposed improvements to the lot(s) demised and to the improvements on adjacent lots, utilities and access thereto, curbs, walks, driveways, parking areas, etc.
2. Floor plans at a scale not smaller than 1/16 inch equals 1 foot.
3. Ground cover plans, including landscaping.
4. A true architectural rendering of the proposed buildings, including the proposed exterior color scheme, style, materials, and design and placement of signs.
5. Any other plans, specifications, or design features which the City or its authorized agent may deem necessary and request.

B. FORM AND CONTENT OF PLANS. The City may promulgate rules governing the form and content of plans to be submitted for its approval and may issue statements of its policy with respect to approval or disapproval of architectural styles.

C. CODES AND REGULATIONS. All improvements shall be planned and constructed in accordance with rules and regulations prescribed by the City or its authorized agent; with the laws and ordinances of the City of El Paso; with applicable building codes and in compliance with the rules and regulations of the Federal Aviation Agency or any successor agencies, where applicable.

D. APPROVAL OF PLANS. Approval of plans and specifications shall be at the sole discretion of the City, such approval not to be arbitrarily or unreasonably withheld. If the Airport or its authorized agent fails to approve or disapprove such plans and specifications within thirty days after submission thereof, said plans and specifications shall be deemed disapproved.

Approval of any and all improvements, plans, signs, or documents by the Director of Aviation does not constitute approval of the City or any other local, state, or

federal agency. It is specifically understood that El Paso International Airport is only one of numerous departments of the City and that, in addition to obtaining approval of Director of Aviation, Lessee shall be required to obtain the approval of other departments as well, such as Engineering, Public Works or Building Services.

Approval of said plans and specifications may be withheld because of:

1. Failure to comply with any of these restrictions.
2. Failure to include such information as may be reasonably requested.
3. Reasonable objection to the design and appearance of the proposed structure.
4. Failure to conform with existing structures upon other parcels.
5. The disapproval of the location, grading plan, color scheme, finish, design, proportions, style or architecture, height, or appropriateness of the proposed structure or because of any other matter which, in the judgment of the City, would render the proposed structure inharmonious with the general plan for improvement of the Airport.

Approval of any plans or specifications for use on any one parcel shall not be deemed a waiver of the City's right, in its discretion, to disapprove the same plans or specifications if such plans or specifications are subsequently submitted for approval for use on any other parcel or parcels.

E. COMMITMENT TO CONSTRUCT. Upon approval by the City of plans for construction of any structure, a copy of the approved plans shall be deposited for permanent record with the City and a copy of such plans bearing the written approval of the City shall be returned to the owner of the parcel upon which such structure is or will be placed.

Approval of these plans by the City shall constitute a commitment on the part of the tenant to erect and maintain the improvements as proposed and approved and within a reasonable time period, such period to be determined jointly by the City and the tenant and to be set forth in writing by the City.

F. CONSTRUCTION WITHIN TIME SPECIFIED. Any approved construction shall be prosecuted diligently in accordance with the approved plans and specifications and shall be completed within the time period specified. Failure to complete such work in the time specified shall cause such approval to be automatically withdrawn unless the City grants written extension of such approval. After such automatic withdrawal of approval, the tenant will be considered in default of its Lease for such property and the City may terminate such Lease in accordance with the provisions set forth in that document.

G. PLANS FOR ALTERATIONS IN IMPROVEMENTS. All plans for alterations to the leased lot(s), either for the construction of additional facilities or alterations to existing buildings, shall be prepared, submitted and approved as outlined in Paragraphs A through F, above, and shall be subject to the same restrictions as herein provided. This paragraph shall apply only to exterior or structural changes; alterations to the interior of buildings shall not be considered unless they affect the performance standards set forth in Article IV.

H. CONSTRUCTION WITHOUT APPROVAL. If any structure shall be altered, erected, placed or maintained upon any parcel other than in accordance with plans and specifications approved by the City, such alterations, erection and maintenance shall be deemed to have been undertaken without the approval required herein. This restriction

shall be applicable to landscaping plans, as well as architectural plans.

In the event of such construction without approval, the tenant will be considered in default of the Lease for such property and the City may terminate the Lease in accordance with the provisions set forth in that document.

I. FEE FOR EXAMINATION OF PLANS AND SPECIFICATIONS. The City may charge and collect a fee of not more than Two Hundred Fifty Dollars (\$250.00) for the examination of any plans and specifications submitted for approval pursuant to this Article. Such fee shall be payable at the time such plans and specifications are submitted.

The amount of such fee shall not exceed the actual cost to the City of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

J. RIGHT OF ENTRY AND INSPECTION. Any authorized agent of the City may, at any reasonable time and without notice, enter upon and inspect any parcel for the purpose of ascertaining whether the maintenance of such parcel and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither the City nor such authorized agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE VII

GENERAL PROVISIONS

A. CUTTING AND FILLING. The City or any authorized agent thereof may at any time make such cuts and fills upon any parcel or other part of said property and do such grading and moving of earth as, in its judgment, may be necessary to improve or

FIRTH/91578

Deed Restrictions & Covenants

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maintain the streets in or adjacent to any property and to drain surface waters therefrom; provided, however, that after the principle structure upon a parcel shall have been completed in accordance with approved plans, the rights of the City under this paragraph shall terminate with respect to such parcel, except that the City shall thereafter have the right to maintain existing streets and drainage structures.

B. HOUSEKEEPING. If accumulations of weeds, rubbish, or items of equipment or supplies are permitted to remain on a parcel more than ten days after a request in writing from the City to have them removed, the City or its authorized agent may enter upon any parcel for the purpose of removing same by whatever means it deems necessary. Such entry shall not be deemed a trespass and the City shall not be subject to any liability therefor. The cost of such work shall be borne by the tenant.

C. MAINTENANCE OF LANDSCAPING. If landscaping areas are not maintained in accordance with the standards prescribed by the City and the condition is not corrected within ten days after written notice from the City, the City or its authorized agent shall have the right to enter on any of the lot(s) leased and plant or replant such areas, without being deemed guilty of trespass. The costs therefore, as determined by the City, shall be paid by the tenant.

D. USE PERMITS. Such use and occupancy permits as may be required by the Building Code of the City of El Paso shall be maintained in force at all times by each tenant.